

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**CRIMINAL ACTION NO. 3:05-CR-65
(BAILEY)**

DAVID J. ROBINSON,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION THAT DEFENDANT'S
MOTION TO TAKE BACK OR WITHDRAW GUILTY PLEA BE DENIED**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Order dated July 28, 2006 [Doc. 64], this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on August 4, 2006 [Doc. 65]. In that filing, the magistrate judge recommended that this Court deny the defendant's motion to withdraw his guilty plea [Doc. 62].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due by August 18, 2006, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b).

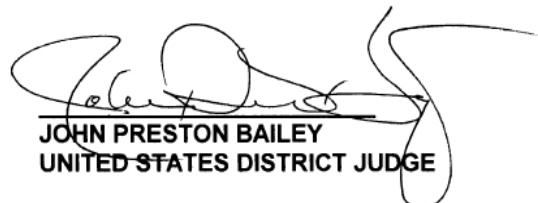
To date, no objections to the R & R have been filed. The magistrate judge filed his R & R more than a year and one-half ago. More than one year ago, the defendant filed a motion for extension of time to file his objections [Doc. 71]. While this motion was never ruled upon, a year has passed, and the defendant has still not filed any objections. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation [Doc. 65]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court hereby **DENIES** the defendant's motion to withdraw his guilty plea [Doc. 62]. Additionally, to the extent that the Court allowed the defendant more than a year to file his objections after his motion for extension to file [Doc. 71] this request is **DENIED as moot**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the defendant.

DATED: April 29, 2008.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE